

IN APPEAL.

Brehaut and Sheppard,

APPELLANTS.

vs

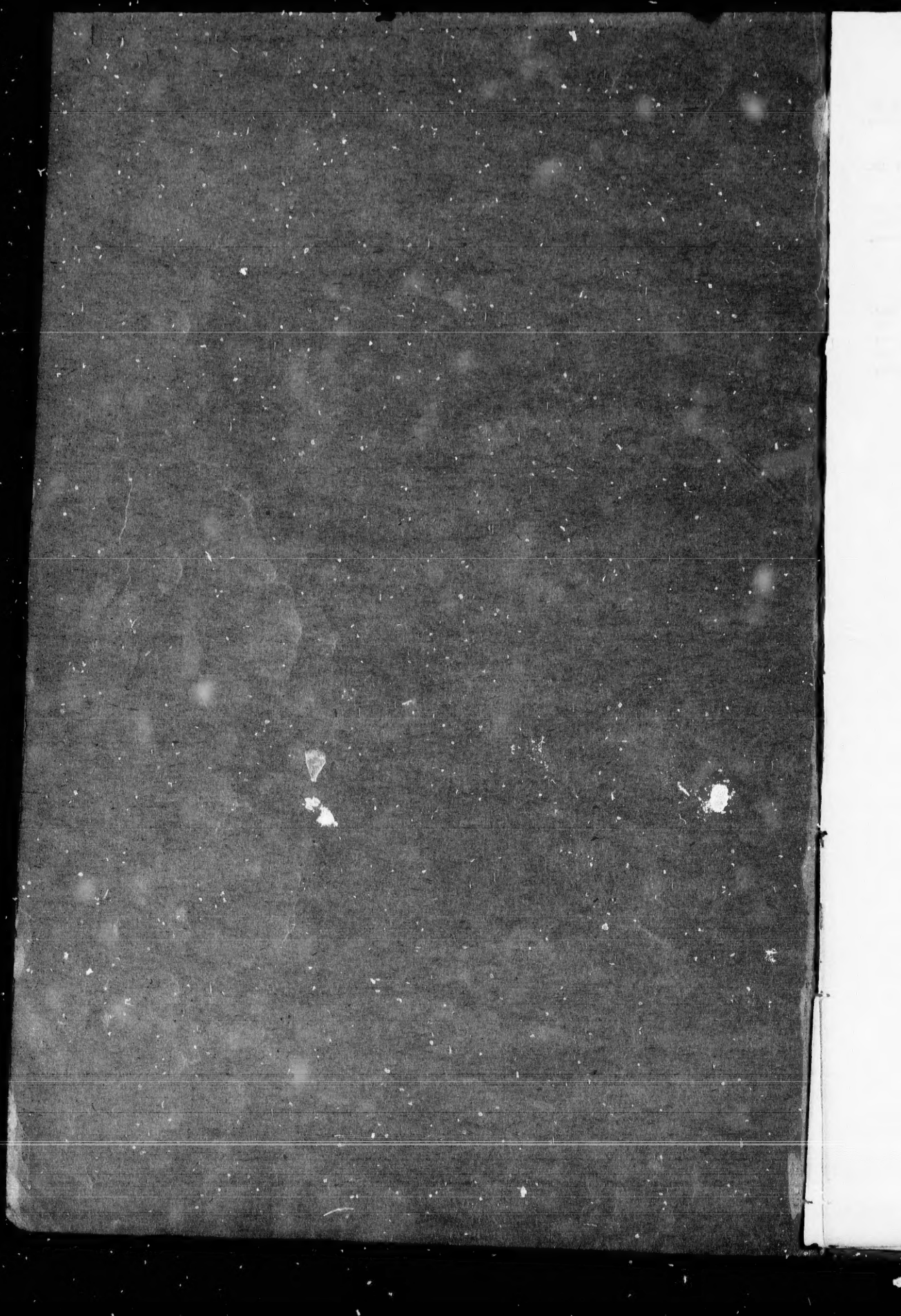
Dean & al.

RESPONDENT.

CASE OF THE APPELLANTS.

A. STUART for APPELLANTS.

IN APPEAL.



IN A CAUSE BETWEEN

Peter Brehaut and William Grut Sheppard,

APPELLANTS.

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Philip Dean and John Dean,

RESPONDENTS.

CASE OF THE APPELLANTS.

THE Declaration in this cause by Philip Dean and John Dean, styling themselves masters and owners of vessels, is in general *Indebitatus Assumpsit*, and contains three counts: the first for money lent and advanced, the second for money laid out and expended, the third upon an account stated.

To this Declaration the Appellants filed a Plea of Peremptory exception and a Plea of *non assumpsit*.

In the first they say that in and by the account stated and delivered by the said Peter Brehaut and William Grut Sheppard to the said Philip and John Dean, upon which the suit or action was founded, all errors of fact and omissions of and in the said account, are specially excepted, and that by error of fact and mistake, in the hurry of Business, and without having examined as well the Bills of Lading for the sundry goods, wares and Merchandizes shipped by the said Peter Brehaut and William Grut Sheppard at Quebec on board the Charlotte, Philip Dean Master, the first thereof amounting to £240 2 6 currency, payable at St. John's in the Island of Newfoundland, by Messrs. Paint and Lemesurier, Merchants, the Consignees of the said goods, as the Bill of Lading for sundry other goods, wares and merchandize shipped by the said Peter Brehaut and William Grut Sheppard at Quebec on board the Schooner Three Sisters, the freight thereof amounting to the sum of £110 12 6, payable at St. John's aforesaid by the said Messrs. Paint and Lemesurier Consignees of the said aforesaid mentioned goods, wares and merchandizes, the said several sums amounting to the sum of £350 15 0, were by error of fact and through mistake as aforesaid credited in the said account so delivered to the said Philip Dean and John Dean.

That the said Philip Dean and John Dean are in truth indebted to them the said Peter Brehaut and William Grut Sheppard in a sum of £140 0 0 for which they the said Peter Brehaut and William Grut Sheppard reserve their recourse &c.

The Respondents joined issue upon these pleas, and the cause was inscribed upon the Roll of *Enquêtes*.

The Evidence adduced by the Appellants established as they think that there were two errors in the abovementioned account which they deem material.

1. The first relates to the existence of the debt as due by the Appellants.

S. T. R. 330
S. P. W. 186
S. B. & P. 583
The Respondents, clearly might have recovered it from the Consignees; they had no recourse against the Appellants.

The Bills of Lading which the Appellants produce prove that the freight was to be paid by the Consignees.

And this agreement was one which cannot be considered to have been lightly entered into either by the one party or by the other, inasmuch as Bills of Exchange were at a considerable discount at Quebec and were known to be always at *par* at Newfoundland.

The

No. 15 of
Record.

The freight was in fact tendered by Messrs. Paint and Lemessurier, (the Consignees) to the Respondents at Newfoundland, but they refused to receive it, whereupon a protest was duly made which is upon the files of this cause.

2. The second relates to the persons who were entitled to recover the freight earned by the Three Sisters from the Consignees.

Abbott on
shipping p. 87
Ed 1804.
2. Str. 830
2. T. R. 298
1. B. & P. 73

It is in evidence that the owners of the Three Sisters were Philip Dean, John Dean and Charles Smith. And the Appellants respectfully contend that by Law all the owners ought to have joined in this action and that the appellants may avail themselves of the objection of the non-joinder of one of them under the general issue.

The Court below however pronounced the following Judgment :

The Court of our Lord the King now here doth adjudge and condemn the Defendants Peter Bechaut and William Gut Sheppard to pay to the Plaintiffs Philip Dean and John Dean, for the cause stated and set forth in the Declaration in this cause filed, the sum of Two hundred and thirty two Pounds, sixteen Shillings and five pence, currency, with interest thereon from the twenty eighth day of March, one thousand eight hundred and twelve, until perfect payment, and costs of suit.

It is from this Judgment that the present Appeal is brought.

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